



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 2150
Falls Church, Virginia 22041

July 18, 2019

Matthew Hoppock
MuckRock News
DEPT MR 67067
411A Highland Ave
Somerville, MA 02144-2516

Re: FOIA 2019-14725

Dear Mr. Hoppock,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek documents from the “Guidance and Publications” intranet website.

Responsive documents are enclosed. Portions of the enclosed documents have been redacted in accordance with 5 U. S.C. § 552(b)(6) to avoid a clearly unwarranted invasion of personal privacy, and/or 5 U. S.C. § 552(b)(5) to protect privileged information. Portions may also be redacted pursuant 5 U. S.C. § 552(b)(7) in order to protect law enforcement sensitive information. The reason for redaction is marked on each portion.

Additionally, the draft decisions in the “Draft Decision Bank” are draft decisions of actual cases created by Judicial Law Clerks for Immigration Judges. They are therefore withheld in full pursuant to 5 U. S.C. § 552(b)(5) as pre-decisional, attorney work product, and/or attorney-client privilege, as well as 5 U. S.C. § 552(b)(6).

The link under “BIA Precedent Committee” merely explains the process for requesting the BIA consider a case precedential. However, the language from the link as well as the fillable request form are included in the release.

The documents in “Training Materials” are from the 2016 Immigration Judge Conference, and have previously been released to you as 2018-46882.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. See <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Joseph Schaaf

Joseph R. Schaaf
Senior Counsel for Administrative Law

Introduction

As Immigration Judges, we sometimes find ourselves wishing that the Board of Immigration Appeals had issued a precedent decision on a particular issue arising in our cases. The BIA Precedent Committee was created to address that need; it serves as a conduit and clearinghouse for recommendations from Immigration Judges to the Board for published guidance. Since its creation in 2007, the BIA Precedent Committee process has resulted in a number of precedent decisions. Judges wishing to request that the Board publish a decision on a particular issue are asked to review the following guidelines and procedures, and to complete the fillable *IJ Request for Board of Immigration Appeals Precedent Decision* form located on the left side of this page. The BIA Precedent Committee will consider your request, may solicit additional input from other judges (including A Numbers of cases in which judges have addressed the issue), and if it concurs with the recommendation will forward the request to the Board.

Guiding Principles

1. Precedent requests should not recommend how the Board should adjudicate any specific case or rule on any given issue. Rather, a request should state the issue and articulate the need for guidance, providing as much circumstantial and legal context as possible short of seeking a particular outcome. If the Board decides to publish on an issue, it will select a particular case for publication, and it will decide how to rule on the issue based on the reasoning of the Immigration Judge's decision along with the briefs and other filings of the parties in that case.
2. An issue can be recommended to the Board for publication without reference to any specific case. An issue can be recommended to the Board for publication without reference to any specific case. However, whenever possible,

requesting Judges should provide the A Numbers of any cases in which they, or other Judges, have ruled on the issue in question. The more A Numbers the Committee can provide the Board, the more chance there is that the Board will find a suitable vehicle for publication.

3. Judges generally base the need for a precedent on cases they have adjudicated; however, Judges may also draw on other sources, including the suggestions of Judicial Law Clerks. (Sometimes the JLCs will see an unresolved issue repeatedly

because various Judges have assigned certain cases to them precisely because the law is not clear on that issue). Judges may draw upon the JLCs to assist in drafting a request for precedent decision and to identify A Numbers of cases in which

the issue has been addressed.

4. This process does not detract from the availability of certification pursuant to 8 C.F.R. § 1003.1(c), and Judges should continue to use that mechanism as they see fit, either separately or in concert with the BIA Precedent Committee process.

The BIA Precedent Committee was created to address the larger scale need for published guidance on unsettled areas of law and issues of general importance nationwide.

Precedent Request Process

Immigration Judge

When an Immigration Judge identifies an issue on which it would be helpful to have guidance from the Board in the form of a precedent decision, the Judge should take the following steps:

Consult with his or her fellow Judges in the same court as to the desirability of a BIA precedent on the issue, and ask for the A Numbers of any decisions in which other Judges have rendered a decision addressing that issue.

Once any comments are received from colleagues, the Judge should complete the fillable

IJ Request for Board of Immigration Appeals Precedent Decision form located on the left side of this page. Judges may seek the

assistance of a JLC in drafting the request, if that would help in preparing a timely and complete request. That form allows the requesting Judge to select their BIA Precedent Committee member from a list and to directly email the request to that committee

member. The requesting Judge should also cc. their ACIJ when sending the request.

Judicial Law Clerks

When a JLC identifies a legal issue that could benefit from a BIA precedent decision, the JLC may raise the issue with the Judge and discuss why they believe a BIA precedent request should be made. The Judge has sole discretion whether to make a BIA precedent request or not. If the Judge agrees with the need for a BIA precedent request, the Judge should follow the process outlined on this page. JLCs may assist in preparing the request and identifying IJ decisions in which the issue has been dispositive.

Committee Member

When a BIA Precedent Committee member receives an IJ request, the member should take the following steps:

If necessary, correspond with the requesting Judge to clarify the issue and the need for precedent.

If necessary, canvass additional Judges to solicit comments on the need for such a precedent and to solicit any additional

A Numbers of IJ decisions addressing the issue.

Verify that the ACIJ was cc'd on the requesting Judge's email.

Forward the request to all of the other committee members, along with any additional information, A Numbers, etc.

Committee

When a committee member forwards a request to the entire committee, the committee will take the following steps:

Confer, solicit additional information including canvassing additional Judges, if necessary, and decide whether to forward the request to the Board.

If necessary, redraft the request.

Forward the request to the ACIJ for Guidance and Publications.

If the ACIJ for Guidance and Publications indicates that there are no unintended consequences of the request, forward the request to the BIA manager designated to receive such requests.

Committee Chairperson

The role of the committee chairperson is to lead the BIA Precedent Committee through its deliberations and to guide the committee through the process of making a recommendation to the Board.

IJ Request for Board of Immigration Appeals Precedent Decision

Judges: If you have an issue you believe warrants a BIA precedent decision, please review the guidelines in the BIA Precedent Committee Process and Guidelines memo, and then complete this fillable form on your computer. At the bottom of the form, you will be able to first save the form to your personal folders and then email it directly to the BIA Precedent Committee member responsible for your court.

If you have any questions about this form, or the process in general, please contact your BIA Precedent Committee representative.

To: BIA Precedent Committee

From:

Immigration Judge Court Location:

Date:

1. Describe The Legal Issue For Which A Precedent Opinion Is Requested:

2. Why Do You Think This Issue Should Be The Subject Of A Precedent Decision?

3. Please copy and paste here any comments you received from fellow judges regarding the desirability of a BIA precedent decision on this issue:

4. If possible, please list at least one case, and preferably more, in which you or another judge has made a final decision.

None available at this time.

5. **SAVE** Click here to save a copy of this request to your personal folders

6. Click on the appropriate button to send your BIA Precedent Request to the BIA Precedent Committee member who represents your court:

Baker, Glen R.

(El Paso, El Paso SPC, Houston, Houston SPC, Kansas City, San Antonio, Port Isabel, Conroe)

Zanfardino, Richard

(Bloomington, Denver, Omaha, Portland, Salt Lake City, Seattle, Tacoma)

Maldonado, Njeri

(Arlington, Atlanta, Charlotte, Falls Church IAC, Memphis, Stewart)

Sharda, Munish

(Eloy, Florence, Honolulu, Imperial, Las Vegas, Otay Mesa, Otero, Phoenix, Saipan (CNMI), Tucson)

Conroy, Charles

(Baltimore, Elizabeth, New York, Newark, Philadelphia, Varick)

Patti, Sebastian

(Adelanto, Los Angeles, Los Angeles Detained, San Diego, San Francisco)

Golparvar, Kuyomars

(Batavia, Boston, Buffalo, Cleveland, Detroit, Fishkill, Hartford, Ulster, York)

Saltzman, Eva

(Aurora, Chicago, Dallas, Fort Worth IAC, Harlingen, Louisville, Pearsall)

Sogocio, Rico

(Krome, LaSalle, Miami, New Orleans, Oakdale, Orlando, San Juan)

Thank you. Your BIA Precedent Committee member will contact you after reviewing your request.

Last revised 2-25-19

Shawn Romig